

SENATE BILL No. 332

DIGEST OF INTRODUCED BILL

Citations Affected: IC 10-16.

Synopsis: Reemployment rights of veterans. Defines the term "employer" for certain National Guard statutes. Allows an Indiana national guard member seeking reemployment with an employer after returning to work from active duty to bring a civil action against an employer that refuses to comply with the employer's obligations under the federal Uniformed Services Employment and Reemployment Rights Act. Allows a court to award: (1) actual damages; (2) court costs and attorney's fees; or (3) liquidated damages; to a prevailing Indiana National Guard member. Extends certain state and federally mandated employment and reemployment rights and protections to nonresident members of the National Guard if the nonresident member's state of origin extends the same or similar rights and protections to members of the Indiana National Guard.

Effective: July 1, 2016.

Zakas

January 7, 2016, read first time and referred to Committee on Pensions & Labor.



Second Regular Session 119th General Assembly (2016)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2015 Regular Session of the General Assembly.

SENATE BILL No. 332

A BILL FOR AN ACT to amend the Indiana Code concerning military and veterans.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 10-16-7-1 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 1. As used in ~~section~~
3 **sections 2.5, 4, 4.5, 6, and 23** of this chapter, "employer" ~~refers to an~~
4 **employer:**

5 (1) ~~other than the state or a county; township; municipality; or~~
6 ~~school corporation in Indiana; and~~

7 (2) **means:**

8 (1) **an individual;**

9 (2) **a partnership;**

10 (3) **an association;**

11 (4) **a limited liability company;**

12 (5) **a corporation;**

13 (6) **a business trust;**

14 (7) **the state;**

15 (8) **a governmental agency; or**

16 (9) **a political subdivision;**

17 that employs any employee other than an employee in a temporary



1 position.

2 SECTION 2. IC 10-16-7-2.5 IS ADDED TO THE INDIANA CODE
3 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
4 1, 2016]: **Sec. 2.5. As used in sections 4, 4.5, 6, and 23 of this**
5 **chapter, "nonresident member" refers to a member of the National**
6 **Guard who:**

- 7 (1) **resides outside Indiana; and**
8 (2) **is employed by an employer within Indiana.**

9 SECTION 3. IC 10-16-7-4 IS AMENDED TO READ AS
10 FOLLOWS [EFFECTIVE JULY 1, 2016]: **Sec. 4. (a)** An employer who
11 knowingly or intentionally refuses to allow a member of the Indiana
12 National Guard to attend any assembly at which the member has a duty
13 to perform under this chapter commits a Class B misdemeanor.

14 (b) **The penalty described in subsection (a) shall be enforced for**
15 **a nonresident member if the nonresident member's state of**
16 **residence extends the same or similar protection to members of the**
17 **Indiana National Guard.**

18 SECTION 4. IC 10-16-7-4.5 IS ADDED TO THE INDIANA CODE
19 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
20 1, 2016]: **Sec. 4.5. (a)** As used in this section, "active duty" means:

- 21 (1) **training or duty under federal law; or**
22 (2) **state active duty as described in section 7 of this chapter;**
23 **performed under an order of the governor.**

24 (b) **A member of the National Guard who:**
25 (1) **has complied with section 23(c) of this chapter;**
26 (2) **has returned from active duty; and**
27 (3) **is seeking reemployment with an employer under the**
28 **federal Uniformed Services Employment and Reemployment**
29 **Rights Act (38 U.S.C. 4301 et seq.);**

30 **may bring a civil action against an employer that refuses to comply**
31 **with the obligations required under the federal Uniformed Services**
32 **Employment and Reemployment Rights Act (38 U.S.C. 4301 et**
33 **seq.), as amended and in effect on January 1, 2003.**

34 (c) **If an employer is found by a court in an action brought**
35 **under subsection (b) to have violated the federal Uniformed**
36 **Services Employment and Reemployment Act (38 U.S.C. 4301 et**
37 **seq.), the court may do the following:**

- 38 (1) **Award:**
39 (A) **actual damages;**
40 (B) **court costs and attorney's fees; or**
41 (C) **liquidated damages in the amount of one thousand**
42 **dollars (\$1,000);**



to the Indiana National Guard member.

(2) Enjoin further violations of this chapter.

(d) This section does not limit a person's rights or remedies under any other state or federal law.

(e) The rights and remedies described under subsections (b), (c), and (d) shall be available to a nonresident member if the nonresident member's state of residence extends the same or similar protections to members of the Indiana National Guard.

SECTION 5. IC 10-16-7-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 6. **(a)** A member of the Indiana national guard is entitled to receive from the member's employer a leave of absence from the member's respective duties in addition to the member's regular vacation period for the total number of days that the member is on state active duty under section 7 of this chapter. The leave of absence may be with or without loss of time or pay at the discretion of the member's employer.

(b) The entitlement described in subsection (a) shall be available to a nonresident member if the nonresident member's state of residence extends the same or similar entitlement to members of the Indiana National Guard.

SECTION 6. IC 10-16-7-23, AS AMENDED BY P.L.156-2015, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 23. (a) As used in this section, "active duty" means:

(1) training or duty under federal law; or

(2) state active duty under section 7 of this chapter; performed under an order of the governor.

(b) The rights, benefits, and protections of the federal Servicemembers Civil Relief Act, 50 U.S.C. App. 501 et seq., apply to a member of the Indiana National Guard ordered to active duty for at least thirty (30) consecutive days.

(c) With respect to a member or reserve member of the Indiana National Guard ordered to state active duty, a person is not subject to remedies and penalties under this section or IC 10-16-20 for failure to comply with the federal Servicemembers Civil Relief Act, 50 U.S.C. App. 501 et seq., unless the member or member's dependent provides documentation to the person that the person is a member or reserve member of the Indiana National Guard ordered to state active duty for at least thirty (30) consecutive days.

(d) The rights, benefits, and protections of the federal Uniformed Services Employment and Reemployment Rights Act, 38 U.S.C. 4301 et seq., as amended and in effect on January 1, 2003, apply to a



1 member of the Indiana National Guard ordered to active duty.

2 (e) Nothing in this section shall be construed as a restriction or
3 limitation on any of the rights, benefits, and protections granted to a
4 member of the Indiana National Guard under federal law.

5 **(f) The rights, benefits, and protections described in subsections**
6 **(b), (d), and (e) shall apply to a nonresident member if the**
7 **nonresident member's state of residence extends the same or**
8 **similar rights, benefits, and protections to members of the Indiana**
9 **National Guard.**

